



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0306; FRL-9713-03-R9]

Air Quality State Implementation Plans; Approvals and Promulgations: California; San Diego County Air Pollution Control District; Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve four permitting rules submitted as a revision to the San Diego County Air Pollution Control District (SDAPCD or “District”) portion of the California State Implementation Plan (SIP). These revisions concern the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA or “Act”). This action will update the District’s applicable SIP with rules revised to address a deficiency identified in our September 16, 2020 limited disapproval action. On May 12, 2022, we made an interim final determination that deferred the imposition of CAA sanctions associated with our September 16, 2020 limited disapproval action. This final approval stops all sanction and federal implementation plan clocks started by our September 16, 2020 limited approval and limited disapproval. This action also finalizes regulatory text to clarify that San Diego County is not subject to the Federal Implementation Plan related to protection of visibility from sources in nonattainment areas.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2022-0306. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*,

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3534 or by email at yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Proposed Action

On May 12, 2022, the EPA proposed to approve the following rules listed in Table 1 into the California SIP and simultaneously made an interim final determination that deferred sanctions triggered by the September 16, 2020 limited disapproval of Rule 20.1.^{1,2} These rules constitute part of the District’s current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this

¹ 87 FR 29048, May 12, 2022, Determination To Defer Sanctions; California; San Diego County Air Pollution Control District (Interim Final Determination).

² 85 FR 57727, September 16, 2020, Approval and Limited Approval and Limited Disapproval of California Air Plan Revisions; San Diego County Air Pollution Control District; Stationary Source Permits.

action represent an update to the District’s preconstruction review and permitting program and are intended to satisfy the requirements under part D of title I of the Act (“Nonattainment NSR” or “NNSR”) as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act (“Minor NSR”). We are approving these rules because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.³

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Amended Date	Submitted Date
11	Exemptions From Rule 10 Permit Requirements	7/8/2020	9/21/2020
20.1	New Source Review – General Provisions	10/14/2021	2/2/2022
20.3*	New Source Review – Major Stationary Sources and PSD Stationary Sources	10/14/2021	2/2/2022
20.4*	New Source Review – Portable Emission Units	10/14/2021	2/2/2022

* The following subsections of the Rules 20.3 and 20.4 were not submitted to the EPA for inclusion in the San Diego SIP: Rule 20.3 Subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); and Rule 20.4 Subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5).

The SIP-approved versions of the submitted rules are identified below in Table 2.

TABLE 2 – SIP APPROVED RULES

Rule #	Rule Title	SIP Approval Date	<i>Federal Register</i> Citation
11	Exemptions	10/4/18	83 FR 50007
20.1	New Source Review – General Provisions	9/16/20	85 FR 57727
20.3	New Source Review – Major Stationary Sources and PSD Stationary Sources	9/16/20	85 FR 57727
20.4	New Source Review – Portable Emission Units	9/16/20	85 FR 57727

The rules listed in Table 2 are being replaced in the SIP by the submitted set of rules listed in Table 1. Additionally, as described in our proposal, the EPA’s final approval of Rule 20.1 addresses our September 16, 2020 limited disapproval.

II. Public Comments and EPA Responses

³ 87 FR 29105, May 12, 2022, Air Quality State Implementation Plans; Approvals and Promulgations: California; San Diego County Air Pollution Control District; Permits (Proposed Rule).

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

III. EPA Action

No comments were submitted on our proposal. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is approving the submitted rules. This action incorporates the submitted rules in the California SIP and replaces the previously submitted rules listed in Table 2. This approval stops all sanction and federal implementation plan clocks started by our September 16, 2020 limited approval and limited disapproval.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the rules described in Section I of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 15, 2022.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(488)(i)(A)(6), (c)(508)(i)(A)(10), (11), and (12), and (c)(557)(i)(B), adding reserved paragraph (c)(587), and adding paragraph (c)(588) to read as follows:

§52.220 Identification of plan-in part.

*	*	*	*	*
(c)	*	*	*	
(488)	*	*	*	
(i)	*	*	*	
(A)	*	*	*	

(6) Previously approved on October 4, 2018 in paragraph (c)(488)(i)(A)(3) of this section and now deleted with replacement in paragraph (c)(557)(i)(B)(1) of this section, Rule 11, “Exemptions From Rule 10 Permit Requirements,” revision adopted on July 8, 2020.

*	*	*	*	*
(508)	*	*	*	
(i)	*	*	*	
(A)	*	*	*	

(10) Previously approved on September 16, 2020 in paragraph (c)(508)(i)(A)(6) of this section and now deleted with replacement in paragraph (c)(588)(i)(A)(1) of this section, Rule 20.1, “New Source Review – General Provisions,” revision adopted on October 14, 2021.

(11) Previously approved on September 16, 2020 in paragraph (c)(508)(i)(A)(8) of this section and now deleted with replacement in paragraph (c)(588)(i)(A)(2) of this section, Rule 20.3,

“New Source Review – Major Stationary Sources and PSD Stationary Sources” (except subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on October 14, 2021.

(12) Previously approved on September 16, 2020 in paragraph (c)(508)(i)(A)(9) of this section and now deleted with replacement in paragraph (c)(588)(i)(A)(3) of this section, Rule 20.4,

“New Source Review – Portable Emission Units” (except subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5)), revision adopted on October 14, 2021.

* * * * *

(557) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(1) Rule 11 “Exemptions From Rule 10 Permit Requirements,” revision adopted on July 8, 2020.

(2) [Reserved]

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(587) [Reserved]

(588) The following regulations were submitted on February 2, 2022 by the Governor’s designee as an attachment to a letter dated January 31, 2022.

(i) *Incorporation by reference.* (A) San Diego County Air Pollution Control District.

(1) Rule 20.1 “New Source Review – General Provisions,” revision adopted on October 14, 2021.

(2) Rule 20.3 “New Source Review – Major Stationary Sources and PSD Stationary Sources,” (except subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on October 14, 2021.

(3) Rule 20.4 “New Source Review – Portable Emission Units,” (except subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5)), revision adopted on October 14, 2021.

(B) [Reserved]

(ii) [Reserved]

3. Section 52.281 is amended by revising paragraph (d) to read as follows:

§52.281 Visibility protection.

* * * * *

(d) The provisions of §52.28 are hereby incorporated and made part of the applicable plan for the State of California, except for the air pollution control districts listed in paragraphs (d)(1) through (6) of this section. The provisions of §52.28 remain the applicable plan for any Indian reservation lands, and any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, located within the State of California, including any such areas located in the air pollution control districts listed in paragraphs (d)(1) through (6) of this section.

(1) Monterey County air pollution control district;

(2) Sacramento County air pollution control district;

(3) Calaveras County air pollution control district;

(4) Mariposa County air pollution control district;

(5) Northern Sierra air quality management district; and

(6) San Diego County air pollution control district.

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